Remarks

Reconsideration of the above-captioned application is respectfully requested. Claims 19, 22, 27, 30, and 37 have been rejected under 35 U.S.C. §102 as being anticipated by Klosterman et al., USPN 6,469,753, and Claims 1-3, 7-12, 16-18, 20, 21, 23, 26, 28, 29, 31, 34-36, 39, and 40 have been rejected under 35 U.S.C. §103 as being unpatentable over Klosterman et al. in view of Levitan, USPN 6,698,023 and various and sundry takings of "official notice". Likewise, Claims 4-6, 13-15, 24, 25, 32, 33, and 38 have been rejected under 35 U.S.C. §103 as being unpatentable over Klosterman et al. in view of various and sundry takings of "official notice".

In addition, Claims 1-40 also have been provisionally rejected for double patenting over co-pending U.S. patent applications serial nos. 09/840,327, 09/840,546, and 09/839,630. However, since none of these applications was filed before this application, it appears that the double patenting rejection is incorrect; in any case, it is provisional only, so Applicant will hold in abeyance paying more money to file a Terminal Disclaimer until at least one of the applications is allowed.

The fact that Applicant has focussed its comments distinguishing the present claims from the applied references and countering certain rejections must not be construed as acquiescence in other portions of rejections not specifically addressed.

To overcome the Examiner's rejections, Claim 1 has been amended to recite providing a mixer receiving the television channels and virtual channel, providing a switch receiving an output of the mixer, and configuring the switch to pass the output to a display based at least in part on a user channel selection as shown in Figure 2 and disclosed on page 7, last four lines and on page 9, lines 8-16. Independent Claim 10 now recites a system that includes a mixer receiving signals from the tuner and the Web page receiver and

selectively mixing TV signals with Internet signals for display thereof on a TV screen. Claims 1-11 remain pending.

Because neither reference mentions the word "mixer" much less suggests a mixer that can mix Internet signals with TV signals, the rejections are overcome.

With respect to the takings of "official notice" to reject Claims 7 and 8, MPEP §2144.03 advises that the taking of official notice can be taken only of facts that "are capable of instant and unquestionable demonstration as to defy dispute", giving, as examples, adjusting flame intensity as needed for heat and tape recorders automatically erasing old data when new data is recorded onto them. Official notice of dependent claim limitations "might be appropriate" but only if the facts so noticed "are of notorious character".

Accordingly, official notice "is permissible only in some circumstances". In any case, according to the MPEP official notice is most inappropriate of technical facts in areas of esoteric technology or of specific knowledge of the prior art. Still further, "ordinarily there must be some form of evidence in the record to support an assertion of common knowledge", and "general conclusions concerning what is basic knowledge without specific factual findings will not support an obviousness rejection."

With the above guidance in mind, Applicant believes credulity is strained in alleging that receiving consumer input via a conventional television control device, using the input to establish a consumer profile, then using the consumer profile to establish a virtual channel or to update a virtual channel is "capable of instant and unquestionable demonstration as to defy dispute". Indeed, quite the opposite. Further, for the same reason the limitation of Claim 8 (storing input in memory inside the television at a first time, and then transmitting it to a site remote from the television at a second time) cannot credibly be regarded as being so ubiquitous as to defy dispute that everyone in the art knows about it.

It must be noted in addition that the question is not just whether various elements are well known, but also where the prior art supplies the motivation to combine the allegedly well-known features with the rest of the claimed elements. That is, regardless of how an element is identified in the prior art, i.e., using a reference or "official notice", the remaining task for an examiner is to show why the prior art suggests the element in the combination claimed.

For each and every taking of official notice, should the rejections be persisted in Applicant hereby requests not only a prior art showing under MPEP §2144.03 but also the requisite prior art suggestion to combine the allegedly well-known feature in the combination being rejected.

The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance. The provisional obviousness-type double patenting rejections are noted; since neither this application nor the relied-upon applications have yet been allowed, Applicant will hold in abeyance the filing of a Terminal Disclaimer (and the concomitant fees) until such time as a claim in this application is indicated as being allowable but for obviousness-type double patenting.

Respectfully submitted,

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